

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALPINE LAND & RESERVOIR CO., *et al.*,

Defendants.

Re: Nevada State Engineer Ruling
No. 6226

Equity No. D-183-LDG

Case No. 3:73-cv-00183-LDG

Subfile No. 3:73-cv-00211-LDG

ORDER

The State Engineer moves to stay (#9) this action, arguing that the petitioner, Stillwater Farms, also filed a petition for judicial review in the Tenth Judicial District Court for the State of Nevada. The United States of America opposes the motion, and is joined in opposition by the Truckee-Carson Irrigation District. Having considered the arguments of the parties, the Court will deny the motion and will instead set a briefing schedule for this matter.

The State Engineer argues that the Court should defer to the state court's jurisdiction pursuant to *Colorado River Water Conservation Dist. v. United States*, 424 U.S.

1 800 (1976). However, this Court has exclusive jurisdiction over appeals of State Engineer
2 rulings on water rights subject to the Alpine Decree because it was this Court that first
3 established jurisdiction over the *res* — Carson River water rights — when it adjudicated the
4 Alpine Decree. See *United States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007, 1013
5 (9th Cir. 1999) (“*Alpine III*”). Under the *Alpine* and *Orr Ditch* decrees, the administration of
6 water rights generally follows Nevada state law. See *United States v. Alpine Land &*
7 *Reservoir Co.* [“*Alpine II*”], 878 F.2d 1217, 1223 (9th Cir. 1989); *United States v. Orr Water*
8 *Ditch Co.*, 914 F.2d 1302, 1308 (9th Cir. 1990). Nevada state law recognizes that
9 jurisdiction is meant to lie in the federal court in this instance, by providing that one “feeling
10 aggrieved by any order or decision of the State Engineer . . . on stream systems where a
11 decree of court has been entered,” must initiate action for review of the State Engineer
12 decision “in the court that entered the decree.” Nev. Rev. Stat. § 533.450(1). A court
13 retains exclusive jurisdiction over the administration of the water decrees it adjudicates.
14 See *State Engineer of State of Nevada v. South Fork Bank of Te-Moak Tribe of W.*
15 *Shoshone Indians of Nevada*, 339 F.3d 804, 809 (9th Cir. 2003).

16 While the State Engineer argues that its ruling concerns “a state permit right to drain
17 water that may not be enforced against or affect the decree rights adjudicated by this Court
18 in any way,” the petition for review goes beyond this narrow argument. Stillwater Farms
19 seeks to reverse the denial of Application 47786. In so doing, the petitioner concedes that
20 the United States Fish and Wildlife Service has permits to appropriate water in the
21 Newlands Reclamation Project, but argues that the USFWS must call for the water.
22 Perhaps presciently, the State Engineer stated in its ruling that “if [Stillwater Farms] truly
23 believes that illegal use of water is taking place within the Project without the benefit of a
24 water right, that issue should be taken to the decree court with jurisdiction and not resolved
25 by the State Engineer.” Stillwater has indicated that its appeal of the denial of Application
26 47786 concerns decreed waters rights, thus creating exclusive jurisdiction within this Court.

1 In addition, in appealing the limited permit granted for Application 48476, Stillwater
2 Farms asserts Ruling #6226 improperly limits the scope of protection to be afforded to the
3 water right that was granted, and asserts that limited scope of protection afforded by the
4 State Engineer should be reversed to allow protection against, inter alia, illegal diversions.
5 In light of State Engineer's language concerning the illegal use of water in regards to the
6 the USFWS diversion of water, and Stillwater Farms' assertion that the USFWS can only
7 exercise its decreed rights by making a call, Stillwater Farms has further invoked the
8 exclusive jurisdiction of this Court over its appeal.

9 Therefore, for good cause shown,

10 THE COURT **ORDERS** that the State Engineer's Motion to Stay (#9) is DENIED;

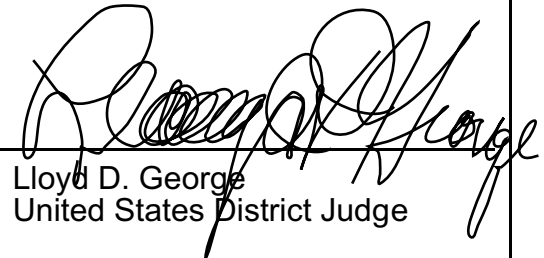
11 THE COURT FURTHER **ORDERS**:

- 12 a. That Stillwater Farms (Petitioner) shall file its opening brief within 40 days of
13 entry of this order.
- 14 b. That the Nevada State Engineer, and any other Real Party in Interest
15 (Respondents) opposing the petition for judicial review shall file their briefs
16 within 30 days after service of Petitioner's brief.
- 17 c. That Petitioner may file a reply brief within 14 days after service of opposition
18 briefs.
- 19 d. That the briefs of the parties shall comply, to the extent practicable, with
20 Federal Rule of Appellate Procedure 28; provided, however, that the length of
21 the principal briefs shall not exceed 30 pages and the reply briefs shall not
22 exceed 15 pages, exclusive of pages containing the table of contents, tables
23 of citations, and any addendum or exhibits. In addition, the form of the briefs
24 shall comply with Local Rules 10-1 through 10-5.
- 25 e. That each party shall prepare and file, with its respective brief, an appendix
26 that shall contain any portion of the papers or record considered by the State

1 Engineer that the party believes is necessary for the Court to review in
2 considering that party's arguments.

- 3 f. That any motions seeking leave for additional time, leave to file over-length
4 briefs or other similar motion shall be filed no less than seven days prior to
5 the scheduled submission date of the brief for which such leave is sought.
- 6 g. That, in addition to the filing of original briefs with the Clerk of the Court, each
7 party shall deliver a courtesy copy of its brief and appendix to the Chambers
8 of the Honorable Lloyd D. George, Lloyd D. George U.S. Courthouse, 333
9 Las Vegas Boulevard South, Room 6073, Las Vegas, Nevada, 89101.

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11 DATED this 26 day of March, 2014.

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13 
14 Lloyd D. George
United States District Judge